



# *International* **Defense**



# **Defense Acquisition University**

- Offer 86 courses in 13 career fields
  - Life Cycle Logistics
  - Auditing
  - Contracting
  - Facilities Engineering
  - Contract Property Mgmt
  - Information Technology
  - Business, Cost Est & Fin Mgmt
  - Mfr, Prod, QA
  - Program Mgmt
  - Purchasing
  - Science & Technology
  - Sys Plan, RD&E
  - Test & Evaluation
- Access DAU Catalog at:

<http://www.dau.mil/catalog/default.asp>

**F-18**



**Tornado**



**MiG-29**



**F-16**



**Gripen JAS-39**



**Eurofighter**



**Mirage**



**F-15**

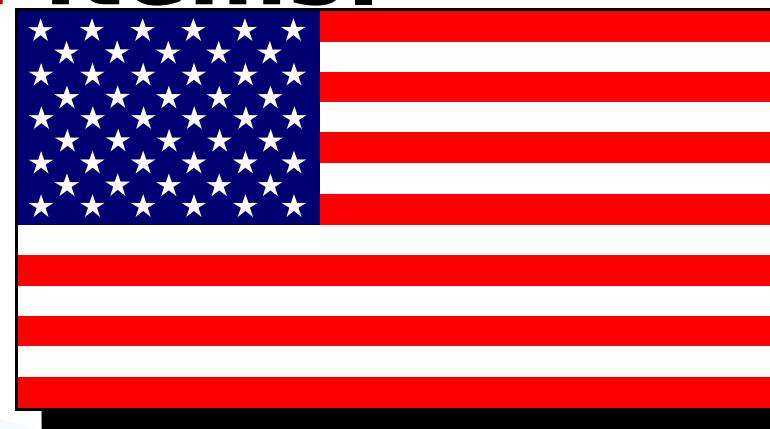




# *Acquisition Policy*

## SAMM C4.5.8

**DoD prefers that countries friendly to the US fill defense requirements with US origin items.**





# **Statutory Acquisition Authority**

- **Arms Export Control Act (AECA)**

- **Section 22 : Foreign Military Sales**

- The President may enter into contracts for the procurement of defense articles or defense services ... to any foreign country or international organization.

- **Section 38 : Direct Commercial Sales**

- The President is authorized to designate ... and to promulgate regulations for the import and export of such (defense) articles and services.



# *Acquisition Policy*

## SAMM C6.3.1

Acquisition for FMS purchasers will be in accordance with U.S./DoD regulations and procedures.

This affords the foreign purchaser the **same benefits and protection** that apply to DoD procurement and is one of the **principal reasons why foreign governments and international organizations prefer to procure through FMS channels.**





# **FMS Acquisition Policy**

**SAMM C4.4.1**

**DoD will NOT enter into sales arrangements that commit DoD to procurement in foreign countries unless DSCA approves an exception.**





# Outline

## ➤ Defense Acquisition System

- ❑ What is it & how does it relate to FMS?

## ➤ Contracting for FMS

- ❑ How do we transform LOA requirements into delivered items/services?

## ➤ Offsets under FMS

- ❑ What are “Offsets” and what is the USG policy?



# Defense Acquisition Management Framework

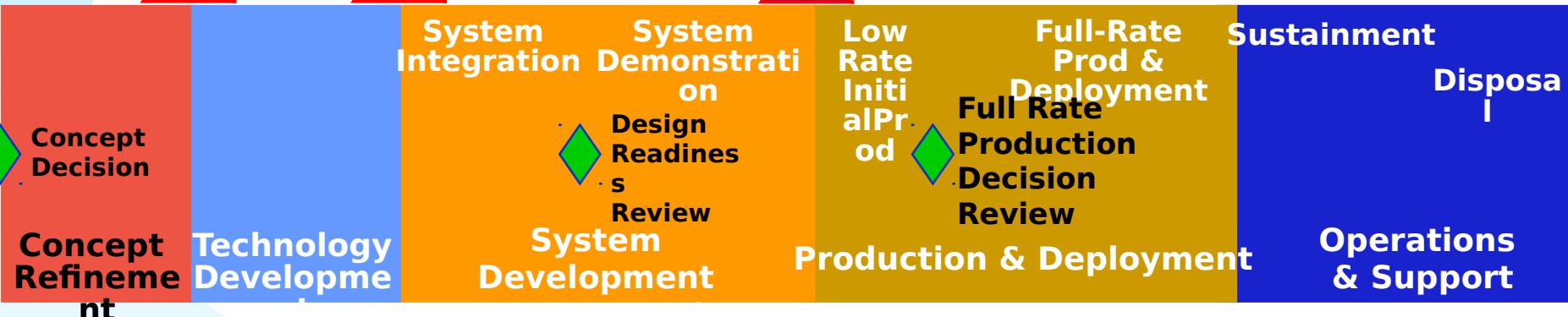
Determination of Mission Needs



A

B

C



International Armament  
Cooperation Programs  
USD (AT&L)

FMS  
Agreements  
USD (Policy)



# **Acquisition Policy**

## **SAMM C5.1.4.3.1**

- Typically only sell systems approved for U.S. full rate production
- Major defense equipment with incomplete operational testing requires waiver
  - DSCA & USD(AT&L) approval required prior to responding to a request (Yockey Waiver)
  - If approved, additional LOA notes to summarize potential effects if U.S. does not approve production





# Acquisition Strategy

- International Programs Security Handbook
  - Very few U.S. defense articles will not be sold or shared with an ally sometime during the article's life.
  - Planning for foreign participation must start at the early in the acquisition process
    - Access to technical data
    - Protection of underlying technology & system capabilities / vulnerabilities



FMS  
20XX ?



# ***Acquisition Strategy***

## **Acquisition Planning For Possible Foreign Participation:**

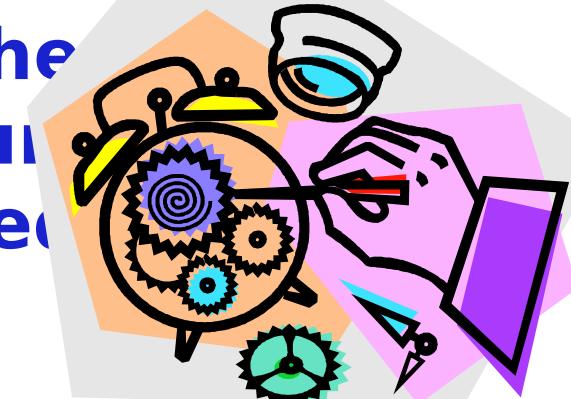
- 1. Cooperative Opportunities Document (COD)**
- 2. Program Protection Plan (PPP)**
- 3. Technology Assessment/Control Plan (TA/CP)**
- 4. Delegation of Disclosure Authority Letter (DDL)**
- 5. Program Security Instruction (PSI)**



# ***Anti-Tamper (AT) Measures***

**SAMM requires all LOAs for materiel  
to include this note:**

**The USG may incorporate AT protection  
into weapon systems and components that  
contain Critical Program Information. The  
AT protection will not impact operations,  
maintenance, or logistics provided that all  
terms delineated in the  
technical documents  
are followed.**





# Lesson Outline

## ➤ Defense Acquisition System

- ❑ What is it & how does it relate to FMS?

## ➤ Contracting for FMS

- ❑ How do we transform LOA requirements into delivered items/services?

## ➤ Offsets under FMS

- ❑ What are “Offsets” and what is the USG policy?



# ***Acquisition Defined***

**The process of acquiring, by contract, the supplies and services required by an organization to fulfill its mission.**

**FAR 2.101**



# *Acquisition Policy*

**SAMM C4.5.14**

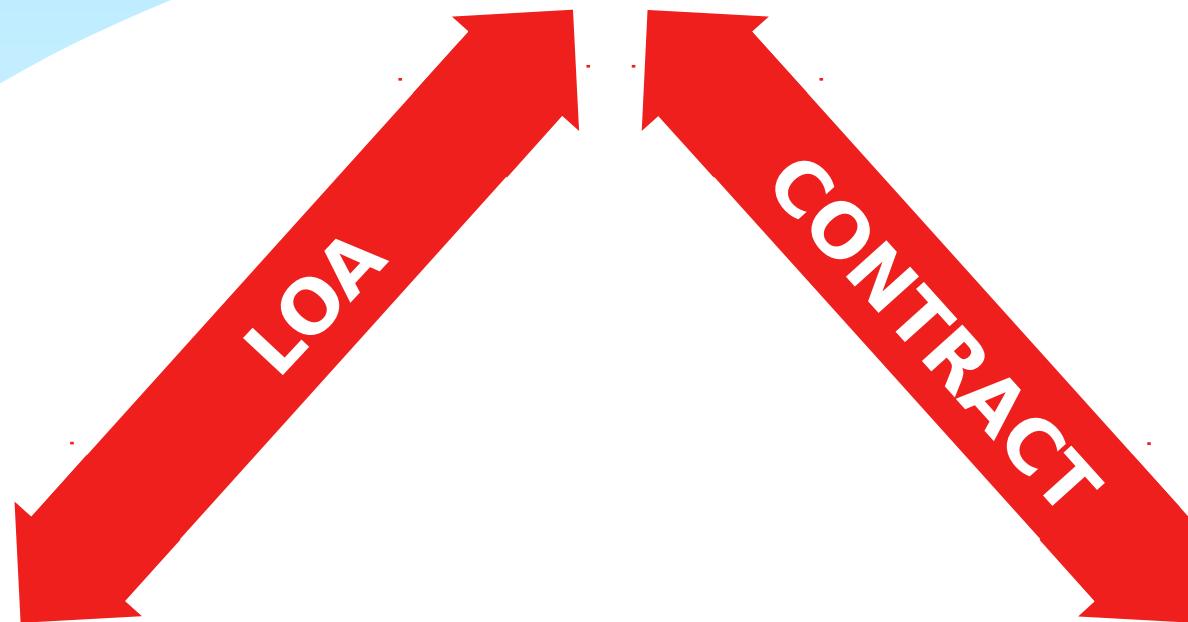
A determination to be made that the sale of a defense item will **not** degrade US defense efforts by taking needed equipment from **US stockpiles**.





# *Foreign Military Sales Buyer/Seller Relationships*

**United States Government**



**Foreign  
Government**

**United States  
Contractor**



# ***LOA / Contract Relationships***

**SAMM C6.3.5**

**Discussions with the foreign purchaser**  
**must be undertaken during the**  
**development of the LOA ... to assure that**  
**the contracting community has all the**  
**data required to award a contract**  
**consistent with contracting requirements**  
**available in the foreign country documents**

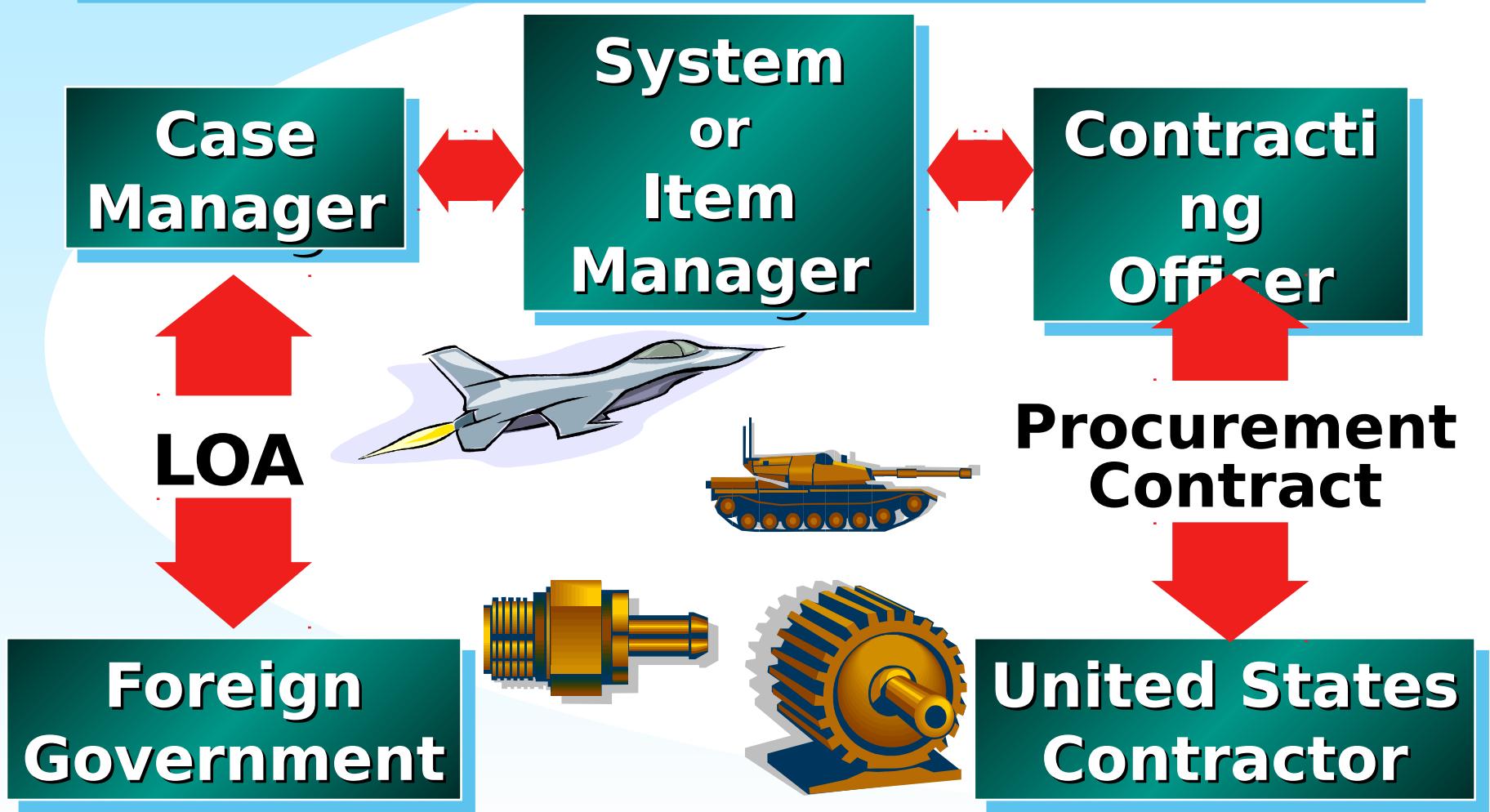




**FMS**

# **Procurement Relationships**

**United States Government**





# **Acquisition Policy**

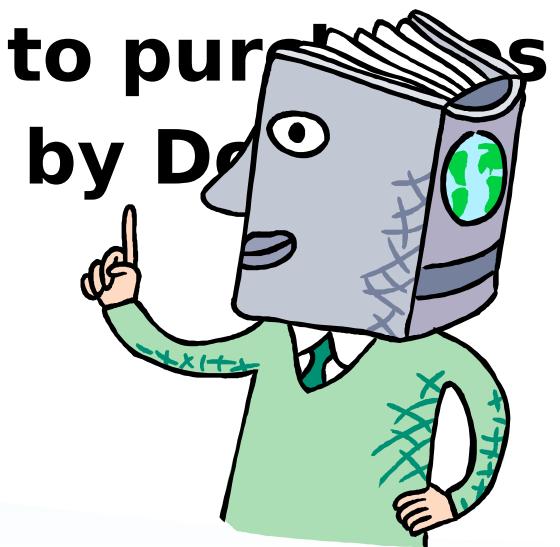
- **LOA Standard Terms & Conditions, Sec 1.2**
  - The USG will furnish the items from its stocks and resources, or will procure them under terms and conditions consistent with **DoD regulations and procedures.**
  - When procuring for the Purchaser, DoD will, in general, employ the **same** contract clauses, the **same** contract administration, and the **same** quality and audit inspection procedures as would be used in procuring for itself.



# **Acquisition Authority**

**SAMM C6.3.1: Federal Acquisition Regulation provisions applicable to the DoD also apply to FMS procurements.**

**DFARS Subpart 201.104: The Defense Federal Acquisition Regulation Supplement (DFARS) apply to purchases and contracts activities made in support of foreign military sales.**





# **Acquisition Authority**

- **FAR - Federal Acquisition Regulation**

<http://www.arnet.gov/far/>

- **DFARS - Defense Federal Acquisition Regulation Supplement**

<http://www.acq.osd.mil/dpap/dars/dfars/index.htm>

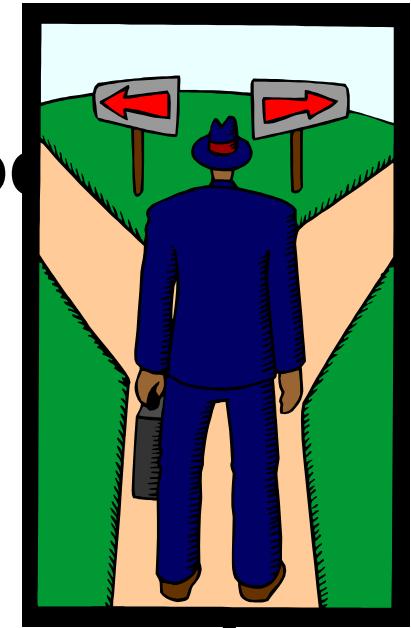
- **FAR & DFARS have force and effect of law**



# **Procurement Methods**

## **FAR 6**

- **Competitive Method**
  - Default procurement method
- **Noncompetitive Method**
  - Exception
  - Use must be justified & approved
  - Referred to as “**Sole Source**” for FMS





# **Acquisition Policy**

## **LOA Standard Terms & Conditions, Sec 1.2**

- The Purchaser understands that selection of the contractor source to fill requirements is the responsibility of the USG
- The USG will select the contractor on the same basis used to select contractors for USG requirements.
- Further, the Purchaser agrees that the US DoD is solely responsible for negotiating the terms and conditions of contracts necessary to fulfill the requirements in this LOA.



# **FMS Sole Source**

## **LOA Standard Terms & Conditions, Sec 1.2**

**Unless the Purchaser has requested, in writing, that a sole source contractor be designated, and this LOA reflects acceptance of such designation by DoD,** the Purchaser understands that selection of the contractor source to fill requirements is the responsibility of the USG, which will select the contractor on the same basis used to select contractors for USG requirements.



# **FMS Sole Source Timing**

**SAMM C6.3.4.1**

- **Normal:** request in the **LOR** for the LOA
- **Exception:** add after LOA acceptance
  - By Amendment (requires customer acceptance)
  - By Modification if requested by customer official with equal or greater authority than the LOA signatory



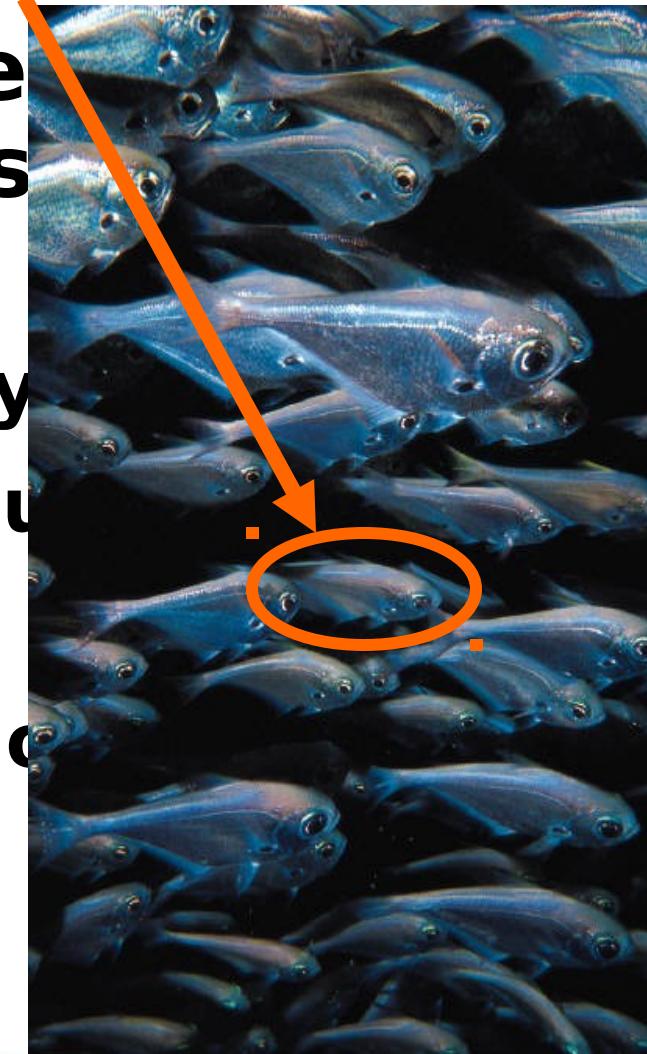


# **FMS Sole Source**

## **SAMM C6.3.4.3**

### **Customer Request Based On Objective Needs SAMM C6.3.4**

- 1. Faster Delivery / Urgency**
- 2. Specific Nonstandard Source**
- 3. History With Vendor**
- 4. Customer Source Selection**
- 5. Standardization**





# **FMS Sole Source**

## **Approvals**

**SAMM C6.3.4.4**

- Implementing agencies evaluate requests for approval or disapproval
- Approved requests documented in LOA Sole Source note
- Disapproved requests coordinated with DSCA

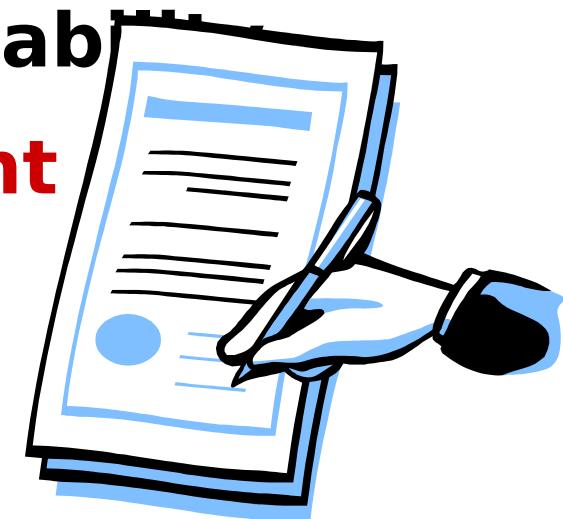




# **Procurement Methods**

## **FAR 6.3 - Exceptions for Noncompetitive Contracts**

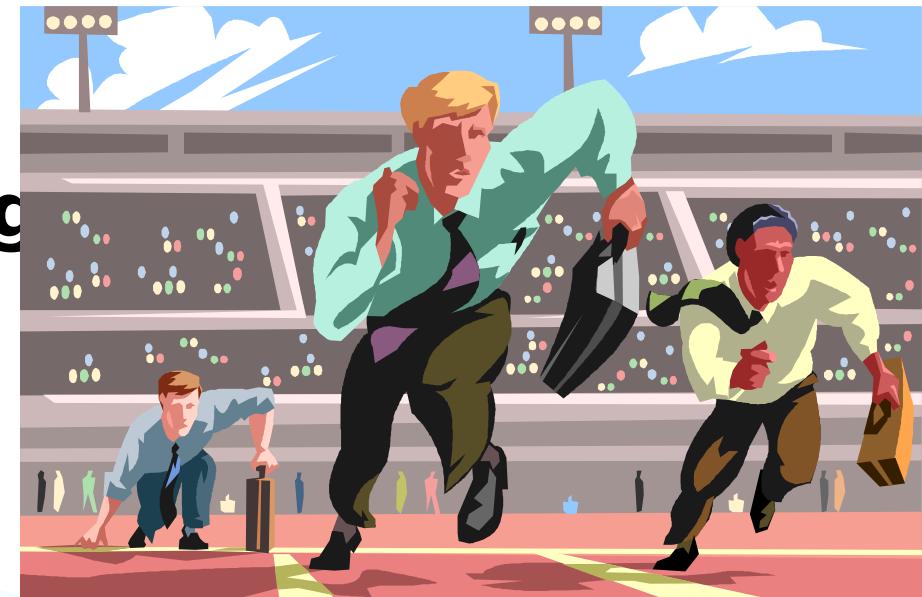
- 1. Single Responsible Source**
- 2. Unusual & Compelling Urgency**
- 3. Maintain Industrial Capab**
- 4. International Agreement**
- 5. Required By Law**
- 6. National Security**
- 7. Public Interest**





# Procurement Methods

- Competitive Method
- Simplified Acquisition Procedures
- Sealed Bidding
- Negotiation

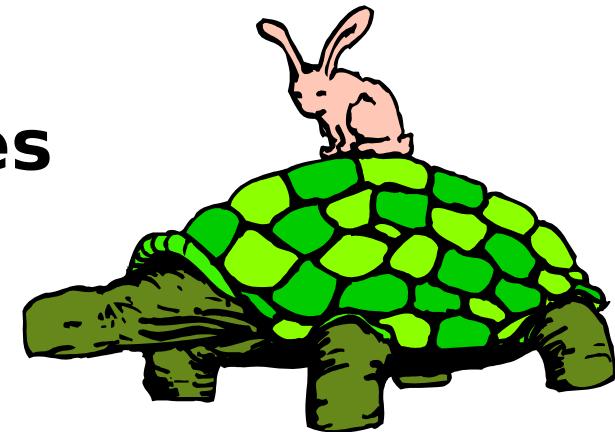




# *Simplified Acquisition*

## FAR 13

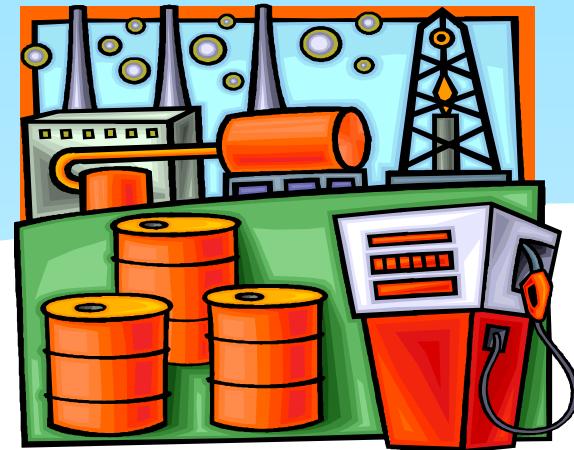
- **Criteria:**
  - Up to \$100K or \$5M if commercial item
- **Process:**
  - Solicit multiple quotes
  - Select & issue order
- **Rationale:**
  - Lower risk purchases do not justify the time and expense of conducting other methods





# **Sealed Bidding**

**FAR 6.401(a)**



**Use when:**

- **Time permits solicitation, submission, and evaluation of sealed bids**
- **Price and price-related factors will be basis for contract award**
- **No discussions needed bidders**
- **Expect more than one bidder**



# Negotiation

## FAR 15

**Use when:**

- Simplified acquisition or sealed bidding are not appropriate
- Discussions needed with offerors
  - Proposed products may differ between offerors
- Anticipate award on factors other than price
  - Evaluate qualitative value of different products





# Negotiation

## FAR 15

Northrop-McDonnell Douglas YF-23  
USAF Museum Photo Archives



**YF-23**

**Versus**

**YF-22**

**Technical Evaluation**  
**+ Business (cost)**

**Evaluation**

**BEST VALUE SELECTION**





# Types of Contracts

## Cost Contracts

- USG pays contractor for all costs determined to be:
  - Allowable
  - Allocable
  - Reasonable
- USG bears cost variance risk

## Fixed Price Contracts

- USG pays contractor a predetermined price
- Contractor bears cost variance risk



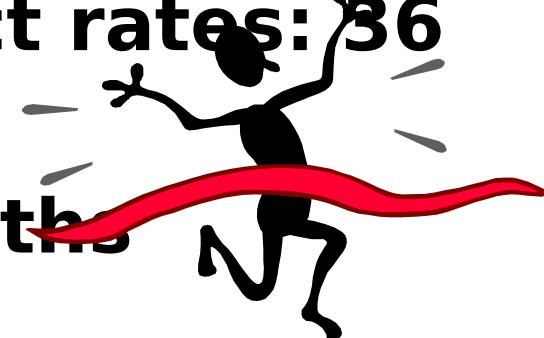


# **Contract Closeout**

## **FAR 4.804-1**

**Time standards for closing out contract files:**

- SAP: upon receipt of property and final payment
- FFP: 6 months after physical completion.
- Cost contracts with indirect rates: 36 months
- All other contracts: 20 months



# <http://www.acq.osd.mil/dp/dars/dfars/html/r20031114/tochtml.htm>

## PART 225 - FOREIGN ACQUISITION

### [TABLE OF CONTENTS](#)

#### [SUBPART 225.0](#) -

[SUBPART 225.1](#) - BUY AMERICAN ACT--SUPPLIES

[SUBPART 225.2](#) - BUY AMERICAN ACT--CONSTRUCTION MATERIALS

[SUBPART 225.3](#) - DELETED

[SUBPART 225.4](#) - TRADE AGREEMENTS

[SUBPART 225.5](#) - EVALUATING FOREIGN OFFERS--SUPPLY CONTRACTS

[SUBPART 225.6](#) - DELETED

[SUBPART 225.7](#) - PROHIBITED SOURCES

[SUBPART 225.8](#) - OTHER INTERNATIONAL AGREEMENTS AND COORDINATION

[SUBPART 225.9](#) - CUSTOMS AND DUTIES

[SUBPART 225.10](#) - ADDITIONAL FOREIGN ACQUISITION REGULATIONS

[SUBPART 225.11](#) - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

[SUBPART 225.70](#) - AUTHORIZATION ACTS, APPROPRIATION ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

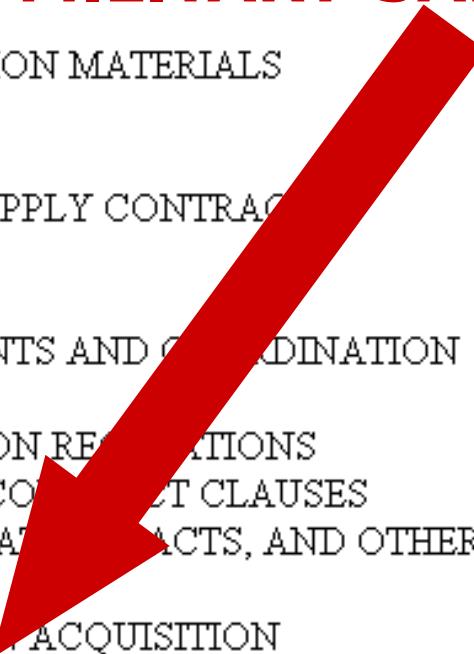
[SUBPART 225.71](#) - OTHER RESTRICTIONS ON FOREIGN ACQUISITION

[SUBPART 225.72](#) - REPORTING CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES

[SUBPART 225.73](#) - ACQUISITIONS FOR FOREIGN MILITARY SALES

[SUBPART 225.74](#) - ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES

## SUBPART 225.73 ACQUISITIONS FOR FOREIGN MILITARY SALES





# ***Acquisitions for FMS***

## **DFARS 225.7300**

- **225.7301 General**
- **225.7302 Guidance**
- **225.7303 Pricing for FMS**
- **225.7304 FMS Customer Involvement**
- **225.7305 Limitation of Liability**
- **225.7306 Offset Arrangements**
- **225.7307 Contract Clauses**



# **Contracting Officer Role**

**DFARS 225.7302**

- Only individual with legal authority to commit the USG to a contract - FAR 1.6
- Aids the military department in preparing LOA:
  - Supports generating price & availability data
  - Identifies & explains any unusual contractual requirements or requests for deviations
- Communicates between case manager & contractor



# **Acquisition Pricing for FMS**

**DFARS 225.7303**

- Use same pricing principles as other DoD contracts
- FMS contract price may be different than DoD prices due to the **allowability** of certain costs





# *Acquisition Pricing for FMS*

## DFARS 225.7303-2

Recognize the reasonable & allocable **cost of doing business with an international customer, even though costs might not be recognized in the same amounts in DoD only contracts**





# **Acquisitions for FMS**

## **DFARS 225.7303-2**

**International cost of doing business examples:**

- Maintaining international sales/service organizations
- Sales promotions, demonstrations, travel
- Configuration studies & related technical services
- Product support and post delivery service
- Special / unusual costs subject to advance understanding
- Offset costs





# **Contingent Fees**

**DFARS 225.7303-4**

- Any type sales commission
- Allowable if:
  - Amount is fair & reasonable
  - Paid to an employee or agency maintained to secure business
- Cannot exceed \$50K unless approved in writing by customer before contract award.





# **Contingent Fees**

## **DFARS 225.7303-4**

**LOAs issued to following countries state that all resulting contracts must exclude the payment of contingent fees unless approved in writing before contract award**

• Australia

a

- Egypt
- Greece
- Israel
- Japan
- Jordan
- Korea
- Kuwait

- Pakistan
- Philippines
- Saudi Arabia
- Taiwan
- Thailand
- Turkey
- Venezuela AF



# **Grant FMFP**

## **DFARS 225.7303-5**

**FMS acquisitions wholly  
financed with nonrepayable  
funds must be priced on same  
costing basis as procurements  
of like items by DoD for its  
own use**



# ***Customer In Contract Process SAMM C6.3.5***

**The DoD component responsible for the LOA will assure sufficient details are included in the LOA to enable the contracting officer to negotiate and award a contract without foreign country representation or direct involvement in formal negotiation process.**





# **Customer In Contract Process**

## **DFARS 225.7304**

- FMS Customer may:
  - Request **sole source prime** and **subcontractors**
  - Propose **additional sources**
- At contracting officer discretion, customer can participate in discussions with industry on:
  - Technical Specifications
  - Delivery Schedules
  - Price/Performance Tradeoffs
  - Other Requirements Unique to FMS Purchaser





# **Customer In Contract Process**

## **DFARS 225.7304**

- **FMS Customer Cannot:**
  - Observe Negotiations Involving Cost or Pricing Data
    - Deviations must be Granted By USD (AT&L)
  - Receive contractor proprietary data unless approved by contractor
  - Direct exclusion of specific firms
  - Interfere with prime contractors placement of subcontracts





# **Release of Contract Data**

## **SAMM C6.3.6.2**

- Contractual obligations between the USG and FMS purchaser are contained in LOA
- FMS purchaser has no privity of contract and therefore no legal right to the contract
- Release can be considered if contract is unclassified and only covers purchaser's requirement
- If contract is classified or contains other requirements, release is not authorized





# **Contract Administration**

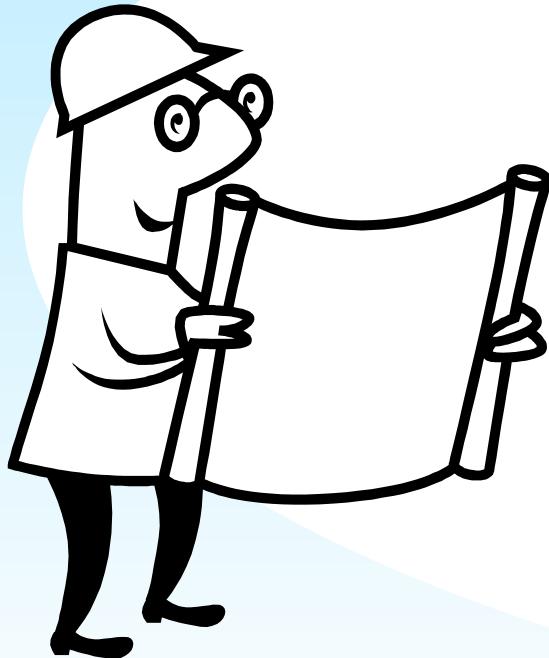
**DFAR 242.202**

- **Procuring Contracting Officer (PCO) shall not retain any contract that requires administration at or near contractor facilities.**
- **Contract administrative functions delegated to an Administrative Contracting Officer (ACO)**
- **Defense Contract Mgmt Agency (DCMA) maintains Contract Administration Offices (CAO) to perform contract administration functions**



# ***Contract Administration Services (CAS)***

## **Contract administration**



**Quality control**

**Contract audit**



# **Contract Administration**

## **FAR 42**

- Activities accomplished in or near a contractor's plant for the benefit of the USG which are necessary to the performance of a contract.
- Normally performed by Defense Contract Management Agency

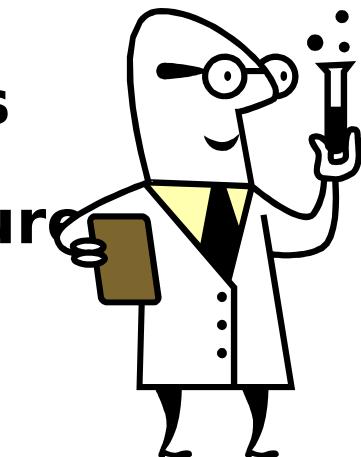




# **Quality Assurance**

## **FAR 46**

- USG actions necessary to determine that the supplies or services **conform** to contract requirements.
- Procuring Contracting Officer identifies the specifications for inspection, testing, and other quality requirements
- Administrative Contracting Officer applies quality assurance procedures
- Performed at any stage of manufacture or performance of services





# **Contract Audit**

## **FAR 42**

- Provide **financial information and advice** to government procurement officers
- Review control system established by contractors
- Examine contractor's statements of actual and estimated costs
- Performed by the Defense Contract Audit Agency (DCAA)





# FMS Contracting Process

**Customer**

Requirement Determination

**Case Manager**

LOA Preparation

Case Implementation

**Inventory Mgr or Program Mgmt Office**

Procurement Requests

**Procuring Contracting Officer**

Solicitation

Evaluation

Discussions

Selection of Source

Award

**Administrative Contracting Officer**

Assignment

Control System

Performance Measurement

Contract Modifications

Completion Audit Payment/ Closeout

**Case Manager**

LOA Case Closure



# **Lesson Outline**

## ➤ Defense Acquisition System

- ❑ What is it & how does it relate to FMS?

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- ❑ How do we transform LOA requirements into delivered items/services?

## ➤ Offsets under FMS

- ❑ What are “Offsets” and what is the USG policy?

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**F-15**





# Romania To Buy 48 New Fighter Jets

**REUTERS, BUCHAREST Posted 02/22/07**

Romania joined NATO in 2004 and became an EU member in January. It is a staunch ally of U.S. military operations in Iraq and Afghanistan but its **Soviet-made MiG-21s are not compatible** with the alliance's missions.

Romania's defense minister stated, "We need to fulfill missions for NATO and the EU, which makes it very clear that Romania must get 48 multipurpose jets"

NATO members from the former Soviet bloc have in recent years **replaced MiGs with U.S.-made F-16s or Gripen fighters** made by Sweden's Saab and Britain's **BAE Systems**.



# Offset Definition

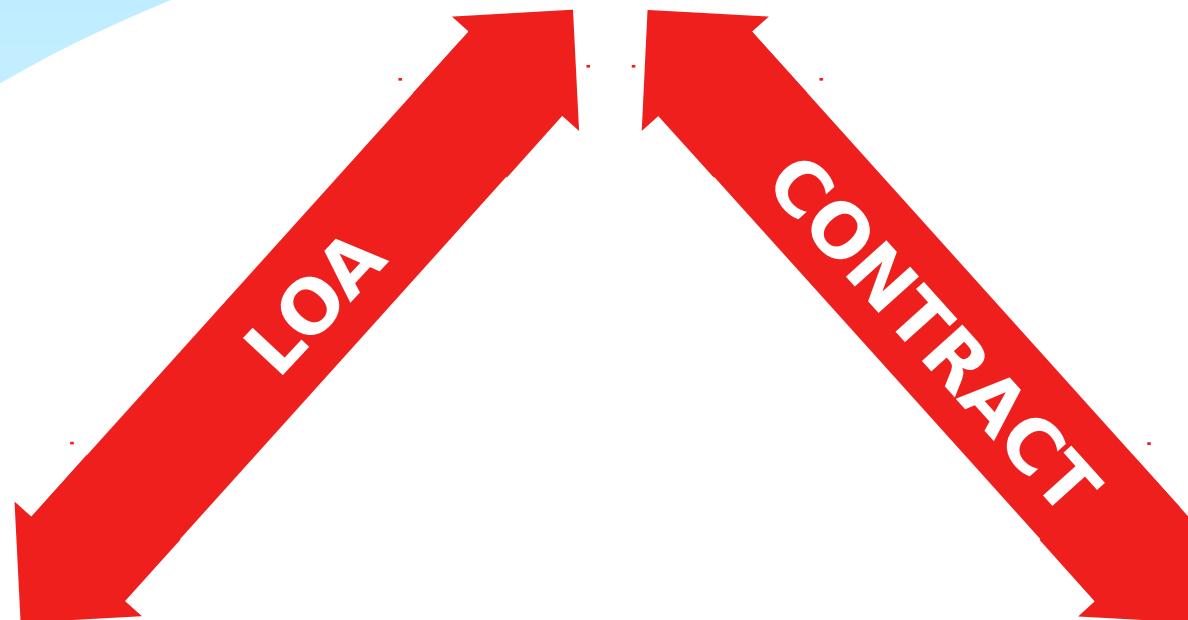
**Commercial compensation practices demanded by a foreign purchaser and agreed to by a contractor that obligate the contractor to perform actions that will “Offset” the outflow of money.**





# *Foreign Military Sales Buyer/Seller Relationships*

**United States Government**



**Foreign  
Government**

**United States  
Contractor**

**OFFSET**



# Types of Offsets

**Direct** = Compensation in goods related to defense system being sold



**Indirect** = Compensation in goods unrelated to the defense system sold





# Offset Example

## Offset Terms

US Firm: Fighters-R-US

Quantity: 10 EA F-99 Fighters

Total Sale: \$500M

Bandaria Requires 100% Offset

Agreement Period: 5 years

Offset Obligation: \$500M



# Offset Example

## DIRECT OFFSETS

	Value	Multiplier	Offset Value
<b>Technology Transfer</b>			
Fighter Repair & Maint Tech	30	6	180
<b>Co-Production</b>			
Bandaria Firm Subcomponents	220	N/A	220
<b>Direct Total</b>			<b>400</b>



# Offset Example

## INDIRECT OFFSETS

	Value	Multiplier	Offset Value
<b>Purchase</b>			
Marble Statues	35	N/A	35
<b>Financing</b>			
Invest in Bandaria Industry	20	N/A	20
<b>Technology Transfer</b>			
Submarine Technology	30	N/A	30
<b>Marketing</b>			
Market Fish in US	15	N/A	15



# Offset Example

Direct Offsets	400
	+
Indirect Offsets	100
	=
Total Offset	500



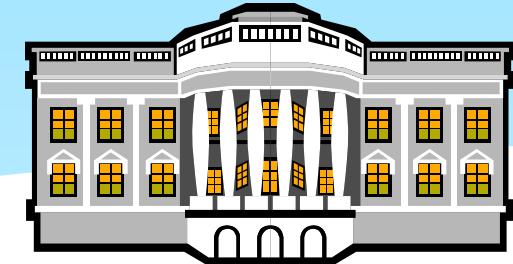
# Offset Costs



- DoD allows contractors to recover offset costs when:
  - FMS contracts are based on LOAs financed wholly by purchaser **cash or repayable credits**.
  - Offset costs are **included in the LOA line item unit cost**
  - USG contracting officer responsible for determining the reasonableness of offset costs claimed by contractor



# **Offset Policy**



- **No USG agency shall encourage, enter directly into, or commit U.S. firms to any offset arrangement**
- **Negotiations/decisions regarding offsets reside with the companies involved.**
- **USG funds shall not be used to finance offsets**
- **Offset description included with Congressional Notification**



# **LOA Offset Note**

**The DoD is not a party to any offset agreements that may be required by the Purchaser in relation to the sales made in this LOA and assumes no obligation to administer or satisfy any offset requirements or bear any of the associated costs. To the extent that the Purchaser requires offsets in conjunction with this sale, offset costs may be included in the price of contracts negotiated under this LOA. If the Purchaser desires visibility into these costs, the Purchaser should raise this with the contractor during negotiation of offset arrangements.**



## F-16 Offsets: \$125 Million Each Poland Drives Hard Bargain for Falcons

Poland and Lockheed signed a Master Offset Agreement valued at \$6.023 billion as part of Poland's procurement of 48 F-16 C/D Block 52 aircraft. The 10-year agreement details a series of specific offset projects designed to bring **high technology, new jobs and growth to the Polish economy.**

Poland's Deputy Minister of Economy said, "The agreement is intended to enhance Poland competitively in the **global economy, create jobs and enhance local labor market skills.** **It was in the interest of Lockheed Martin** to conclude this agreement **allowing the sale of the F-16s to proceed**, and it is in our interest to take advantage of the unique opportunities that a strategic economic relationship with the United States provides us. This agreement is a success for Poland, and the long term benefits to the Polish economy will allow us to play a full role in the new competitive environment of the European Union. "



LOCKHEED MARTIN 

